

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 340 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
 2. To be referred to the Reporter or not? No. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? : NO
No.

RIDDHI SIDDHI VINAYAK DADA MANDIR TRUST THRO' TRUSTEES

Versus

SHAPDESHWAR SIDDHI VINAYAK MANDIR THRO'MAHANT

Appearance:

MR MB GANDHI for Petitioners

RULE SERVED BY DS for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/10/2000

ORAL JUDGEMENT

Rule was issued to the respondents and an affidavit with regard to service of notice of Rule on the respondents has been filed. But none appears on behalf of the respondents.

2. This revision application has been preferred against the order dated 13-1-2000 passed below the application exh.. 18 in Regular Civil Suit no. 333/1999 whereby the application exh. 18 for impleadment of the defendant to the suit proceedings has been rejected.

3. The contention of the learned counsel for the petitioners is that the petitioners are claiming to be the trustees of the trust property which is a registered trust under the relevant provisions of the law. The plaintiff has filed the suit for declaration and permanent injunction and claims to be Mahant of the property in dispute and for declaring that the properties shown in the Schedule-A of the plaint are of the ownership of the plaintiff and the defendant has no right to snatch away the plaintiff's place or to take the right of the plaintiff and for permanent injunction with respect to the property mentioned in Schedule-A of the plaint that the defendants, their persons, agents etc. be restrained from taking the possession of the suit premises or from obstructing in peaceful enjoyment of the plaintiff's possession in respect of the aforesaid property.

4. The trial Court has erroneously rejected the application of the plaintiff coming to the conclusion that the plaintiff is performing of "Seva Puja" and may obtain a decree even for a limited purpose cannot be said to be prejudicial to the proposed party who desires to be joined as a defendant to the suit proceedings.

5. In the present case, it appears that the plaintiff is claiming to be an owner of the trust property. The petitioners are claiming to be the trustees of the said properties. The trial Court has not examined as to whether the petitioners are trustees and they are necessary parties to be impleaded in the suit proceedings wherein the question of ownership of the property is disputed by the plaintiff himself. Though at some time he has claimed to be "Mahant" of that property while in the prayer clause he is alleged himself to be the owner of that property.

6. I have carefully considered the contention of the learned counsel for the petitioner. Though the notice of rule has been served on the respondents none has appeared on their behalf to assist the court on the basis of the material on record as to whether the petitioners alleged to be the trustees of the property are entitled to contest the suit proceedings initiated by the plaintiff regarding the ownership of the property in dispute or

not. The trial Court has without going through the prayer clause of the plaint has come to a wrong finding that the plaintiff is entitled to perform "Seva Puja" and he may obtain a decree even for a limited purpose it cannot be said to be prejudicial to the proposed party who desires to join as a defendant to the suit proceedings. In case, the plaintiff has no right at all even for "Mahant" or Manager of the trust property, the petitioners being trustees of the properties are necessary parties for determination of the real dispute. The trial Court has committed manifest error in rejecting the application exh. 18 of the plaintiff for impleadment as party in the suit proceedings.

7. Accordingly, this revision application is allowed and the impugned order dated 13-1-2000 passe below the application exh. 18 in R.C.S. No. 333 of 1999 by the Civil Judge (SD), Jamnagar is quashed and set aside and the aforesaid application exh. 18 filed in R.C.S. No.133/99 by the plaintiff is allowed. Rule is made absolute, with no order as to costs.

-0-0-0-0-0-

/JVSatwara/